



600 SOUTH AVENUE WEST • WESTFIELD, NEW JERSEY 07090  
908.654.5000 • FAX 908.654.7866 • WWW.LDLKM.COM

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Gregg A. Paradise  
908.518.6323  
gparadise@ldlkm.com

June 8, 2010

**Document Filed Electronically**

Magistrate Judge E. Thomas Boyle  
United States District Court  
Eastern District of New York  
Long Island Federal House  
824 Federal Plaza  
Central Islip, NY 11722

Re: TRI 6.1-001  
*Therion Inc. v. Media By Design, Inc., et al.*  
Civil Action No. 08-5256-TCP-ETB

Dear Judge Boyle:

We are counsel for plaintiff Therion Inc. in the above-referenced action. Earlier this afternoon, Judge Platt issued an Order (Dkt.107) referring several motions and related matters in this case to Your Honor for a Report and Recommendation. This Order instructed the parties "to communicate with Judge Boyle's Chambers, and to appear on Thursday, June 10, 2010 in his courtroom at 2 p.m., instead of Judge Platt's." The parties had been scheduled to appear before Judge Platt at 10:30 a.m. on that same day.

Pursuant to the Order, we contacted Your Honor's Chambers to discuss this matter. During this call, I noted that, unfortunately, I have a non-movable conflict that prevents me from appearing for a hearing in person on Thursday afternoon. We were directed by Chambers to submit a letter via ECF.

We have consulted with John Dozier, Esq., counsel for defendant BlueHost, and jointly make the following proposal. We note that Judge Platt's Order referred two non-dispositive preliminary issues to Your Honor: "(1) a determination on which Terms-of-Service version controls the case;" and "(2) whether Deft BlueHost should have been allowed to file a new opposition to Plaintiffs' re-filed Summary Judgment Motion." The parties propose to address one or both of these preliminary issues with Your Honor by telephone conference at the rescheduled time indicated in the Order of June 10, 2010 at 2 p.m. (While I am available for a telephone conference Thursday afternoon, due to travel time back to New Jersey, my conflict prevents an appearance in person.)

If Your Honor does not wish to proceed in this fashion and wishes to have an in person hearing, or after a telephone conference wishes to immediately proceed with an in person hearing



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on the referred motions, the parties have consulted with each other and are available on Monday, June 14, 2010.

Thank you for your consideration of this request.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Plaintiff Therion Inc.*

A handwritten signature in cursive script, appearing to read "Gregg A. Paradise".

GREGG A. PARADISE

GAP/dmv

cc: John W. Dozier, Esq. *(via e-mail and ECF transmission)*  
Elise Schwarz, Esq. *(via e-mail and ECF transmission)*